

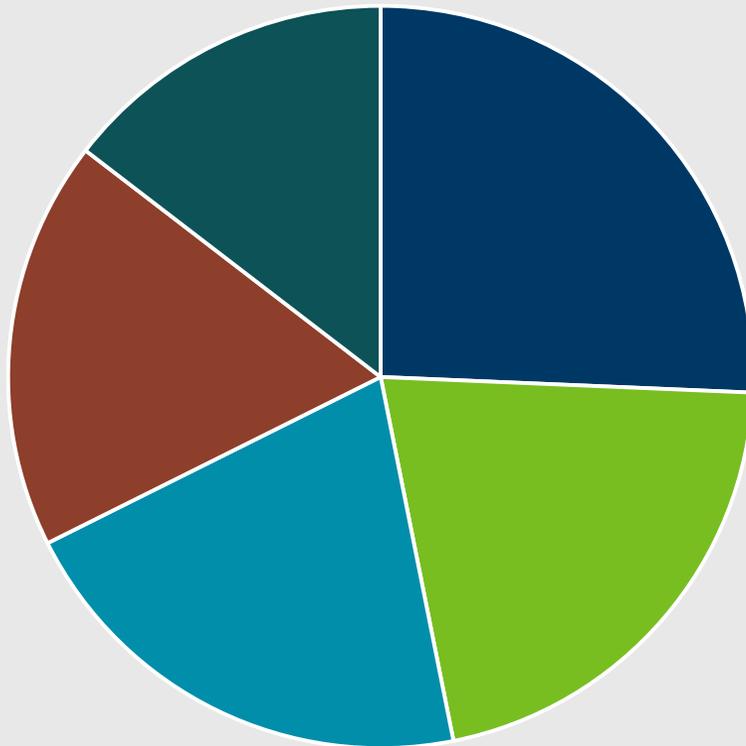


# Legislative Commission on Data Practices

August 8, 2017

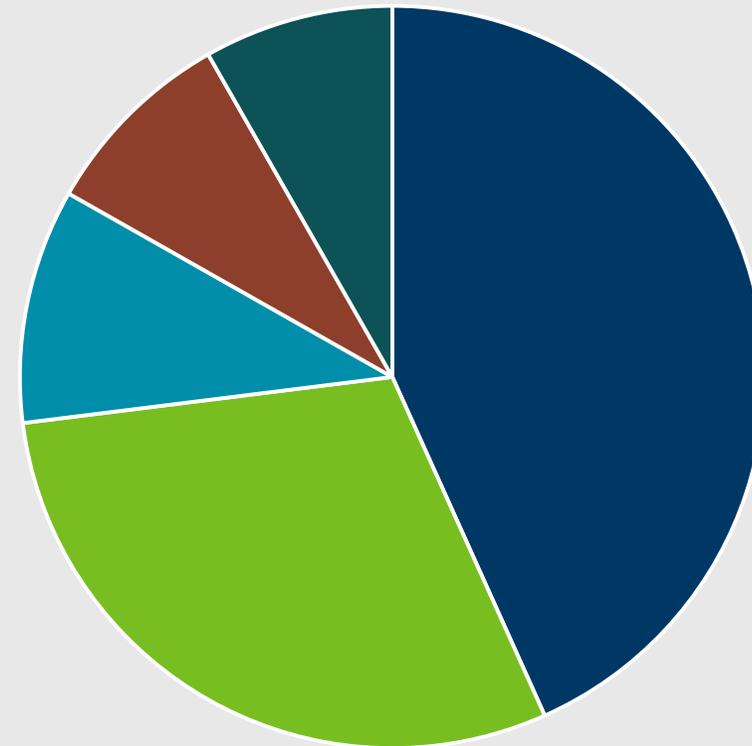
# Types of questions we receive

FY17 Top 5 Questions



■ DP requests ■ LE data ■ OML ■ DP class'n ■ Personnel data

FY17 Top 5 DP Topics



■ LE data ■ Personnel data ■ TW/consent ■ Copy costs ■ Education data

# Copy costs background

- What we hear from our customers: Helpful if the legislature better defined “actual costs” for copies
  - Public customers: Need for clarity around free inspection; copy costs are not always readily transparent
  - Government customers: Providing free inspection comes with a cost to government
- Current law: members of the public
  - Public requests: 25¢ per page if under 100 paper copies vs. “actual cost” for everything else, including electronic copies
  - Data subject requests: only actual cost for copies, no search and retrieval costs
- Current guidance
  - Minnesota Rules 1205.0300, subp. 4: Responsible authority may charge a reasonable fee for providing copies of public data
  - Advisory opinions

# Copy costs background: Minn. Rules guidance

- The Rules allow these costs as part of the “reasonable fee”:
  - the cost of materials, including paper, used to provide the copies;
  - the cost of the labor required to prepare the copies;
  - any schedule of standard copying charges as established by the agency in its normal course of operations;
  - any special costs necessary to produce such copies from machine based record keeping systems, including but not limited to computers and microfilm systems; and
  - mailing costs

# Copy costs background: Advisory opinions

- Fees included as “actual cost”:
  - Cost of media (paper, CD ROMs, DVDs, etc.)
  - Mailing costs
  - Employee time to prepare copies
  - Costs of reproduction that cannot be done by the entity, such as photographs
  - Employee time to search for and retrieve data for copying
    - No search and retrieval time for data subjects
- Cannot be included:
  - Employee time to redact and costs associated with redaction software
  - Operating expenses of copier (electricity, wear and tear, etc.)
  - Preparing fax cover sheets, invoices, etc.
  - Returning data to off-site storage
  - Reviewing or verifying accuracy, not related to copying
  - Sales tax
  - Accounting functions
  - Costs related to inspection

# Copy costs background: Advisory opinions, cont.

- In charging actual cost:
  - Employee time must be calculated based on the wages/salary (may include benefits) of the lowest-paid entity employee who could complete the task

# Why the current guidance is not always helpful

- How to reconcile “actual costs” with “a reasonable fee”
- Most data requests for copies are for email, databases, or other electronic copies
- Difficult to always determine “lowest-paid employee” capable of performing task when request is not for paper copies made at a copier

# Examples: FOIA and other states

- Federal Freedom of Information Act (FOIA)
  - Each agency sets its own fee schedule, must be “reasonable”
  - Fees for computer time vary (some as high as \$270 per hour)
  - Search fees may be charged even if few or no documents are located
- Many states use “actual cost” and some states have no search fees
- Other state examples
  - Hawaii
  - Illinois
  - Massachusetts
  - North Dakota

# Possible options

- Change “actual cost” to a set dollar amount for time spent searching and retrieving
  - Both public and/or data subject requests?
  - Consider average state/local gov’t administrative staff salaries?
  - No charge for initial time spent searching for and retrieving (e.g. 1 hour)?
  - Increases for inflation?
- Public interest exemption from fees (similar to FOIA)
- Costs for redaction
- Costs for inspection
- Penalties for overcharging/inflating costs

# Questions?

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